

RESPONSE

Remark 1:

Applicant has amended the claims to more distinctly describe the present invention. None of the prior art references teaches a heat-resistant container having a lower surface with numerous dimple-like protrusions uniformly distributed thereon for contacting a heating element directly. Applicant submits the present amendments overcome the Examiner's rejections.

Remark 2:

With all due respect, Applicant requests the Examiner to withdraw the cited prior art references as anticipating under 35 USC 103 (a). The following distinctions are drawn between the prior art and the present invention, to provide the Examiner with a clearer understanding of the reasons for patentability of the present invention:

Flashinski et al. teaches *away* from the present invention. Flashinski teaches a device for dispensing volatile materials. However, as Examiner accurately has indicated, the Flashinski references "fails to disclose that the leg-like projections are in direct contact with a hearing surface". Examiner further accurately notes that Flashinski fails to disclose "the exterior surface of the bottom is dimpled." Flashinski states, at column 2, line 10-11, "The present invention provides a way of holding the volatile up off the burner unit . . ." In fact, Examiner will observe that an objective of the present invention is to permit the reservoir containing volatile material to be placed directly on the heater element!

Barnhart teaches *away* from the present invention. Barnhart is directed to an aromatic diffuser with replaceable cartridge. As Examiner accurately notes: "Barnhart . . . fails to teach that exterior surface of the bottom of the container is dimpled." Again, as shown in FIG. 3, the heating element is in intimate contact with a flat, lower exterior surface of the cartridge, but control is obtained through the use of a

complicated ventilation system, thereby regulating indirectly evaporation of the volatile material. In Barnhart, no attempt is made to regulate heat transfer between the heating element and the lower surface of the volatile reservoir. The result requires further ventilation structure which is more expensive to build and is a source of failure of the system, i.e., rupture of the vent, clogging, etc.

Schiebelhuth teaches *away* from the present invention. Schiebelhuth teaches a continuous flow heater control system for infusion beverage apparatuses. As Examiner accurately points out: “[T]he spatial arrangement of the abutment surface and the electric heating element are not congruent.” However, as Schiebelhuth further points out, “The position of the abutment surface is chosen such that it follows the shape of the electric heating element over wide areas.” Apparently, it is “[m]erely in the open area” that there is no contact, i.e., the surfaces are not congruent. Then, to clarify that intimate contact between the heating element and the lower surface of the achieved, Schiebelhuth states: “It is ensured this way that . . . heat emanating from the electric heating element is conducted via the warming plate directly into the storage tank . . .” Again, this is the opposite as that taught by the present invention! The “indentation” of Schiebelhuth can properly be distinguished over the “numerous dimple-like protrusions” described and shown in the present invention. The abutment surface described in Schiebelhuth is described as “circular” in shape, with its position “chosen such that it follows the shape of the electric heating element. In contrast, the dimpled lower surface of the heat-resistant container of the present invention is intended to provide a dispersed heating source comprised of lots of tiny heating points associated with the “numerous dimple-like protrusions”. Rather than having a lower, shaped bottom portion which corresponds to that of the heating element, the lower surface of the present invention is not congruent with the heating element over an entirely different area and for entirely different reasons than that shown in the prior art!

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Remark 3:

Examiner's attention is respectfully drawn to the guidance in these matters provided us by out reviewing courts.: In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. See *In re Rijckaert*, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). A *prima facie* case of obviousness is established when the teachings of the prior art it\self would appear to have suggested the claimed subject matter to one of ordinary skill in the art. See *In re Bell*, 991 F.2d 781, 26 USPQ2d 1529 (Fed. Cir. 1993); *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (C.C.P.A. 1976). If the examiner fails to establish a *prima facie* case, the rejection is improper and will be overturned on appeal. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). This is not to say, however, that the claimed invention must expressly be suggested in any one or all of the references. Rather, the test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See *cable Electric Products, Inc. V. Genmark, Inc.*, 770 F.2d 1015, 226 USPQ 881 (Fed. Cir. 1985); *In re Kaslow*, 707 F.2d 1366, 217 USPQ 1089 (Fed. Cir. 1983); *In re Keller*, 642 F.2d 413, 208 USPQ 871 (C.C.P.A. 1981).

Relevant art is that which addresses the actual problem to be solved by the inventor. *Potts v. Creager*, 155 U.S. 597 (1895); *In re Deminski*, 230 USPQ 313, 315 (Fed. Cir. 1986); *In re Van Wanderham*, 154 USPQ 20, 24 (C.C.P.A. 1967); and *In re Kylstra*, 32 USPQ 382 (C.C.P.A. 1937). As pointed out above, Schiebelhuth solves the problem by using a circular heating element with a corresponding circular abutment surface, and therefore doesn't solve or even address the problem of providing a more even and controlled dispersion of heat across the entire lower surface of the container in contact with the electric heater. Thus, while it is clear the prior art shows an abutment created expressly for the purpose of creating more intimate contact between the heating element and the lower surface of the reservoir, it is certainly not clear that one skilled in the art would deduce the structure of the present

invention, i.e., indentations or protruding dimples to create less intimate contact between an otherwise smooth, lower surface of the reservoir and the heating element. In simple words, the prior art doesn't teach, anticipate or even suggest the use of a dimpled lower surface of a reservoir to reduce contact with a heating element.

These claim elements also could not have been inferred from the prior art of record by one of ordinary skill in the pertinent art. Accordingly, a *prima facie* case of obviousness has not been made out by the Examiner. If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more, the applicants are entitled to the grant of a patent. (*In re Oetiker, supra*, 24 USPQ2d at 1444.) That is the case in this instance.

Accordingly, it is respectfully submitted that Applicant's heat-resistant container having a lower surface with numerous dimple-like protrusions uniformly distributed thereon is not obvious from the prior art references and is patentable thereover. Reconsideration of the claims and allowance thereof is earnestly solicited

Remark 4: (NO NEW MATTER)

Applicant submits that the amendments presented herein present no new matter. All of the devices, systems, methods and/or compositions claimed herein are taught in the Drawings, Specification, Claims and Abstract and other portions of the Application as originally filed.

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CONCLUSION

Applicant respectfully submits that for all the foregoing reasons, the claimed subject matter describes patentable invention. Furthermore, Applicant submits that the specification is adequate and that the claims are in a condition for allowance. No new matter has been entered.

Applicant hereby respectfully requests Examiner to enter these amendments, find them descriptive of useful, novel and non-obvious subject matter, and authorize the issuance of a utility patent for the truly meritorious, deserving invention disclosed and claimed herein.

Without further, Applicant does not intend to waive any claims, arguments or defenses that they may have in response to any official or informal communication, paper, office action, or otherwise, and expressly reserves the right to assert any traverse, additional grounds establishing specificity and clarity, enablement, novelty, uniqueness, non-obviousness, or other patentability, etc.

Further, nothing herein shall be construed as establishing indirectly the basis for any prosecution history, file wrapper estoppel, or similar in order to limit or bar any claim of infringement of the invention described herein, either directly or under applicable doctrine of equivalents.

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Respectfully submitted,

RAY K. SHAHANI
ATTORNEY AT LAW

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By: _____

Ray K. Shahani, Esq.

Attorney for Applicant(s)

Ray K. Shahani, Esq.

Registration No.: 37,554

Attorney at Law

Twin Oaks Office Plaza

477 Ninth Avenue, Suite 112

San Mateo, California 94402-1854

Telephone: (650) 348-1444 Facsimile: (650) 348-8655

E-mail: rks@attycubed.com

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I hereby certify that this paper and the documents attached hereto are being deposited in a postage prepaid, sealed envelope with the United States Postal Service using First Class Mail service under 37 CFR 1.08 on the date indicated and is addressed to "Commissioner for Patent, Alexandria, Virginia 22313-1450". Signed: _____

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